

CITY OF BELMONT
Master **SERVICE**
AGREEMENT
CONTRACT NO: [Click here to enter text.](#)

ROOT FOAMING
FOR THE CITY OF BELMONT

This Master Service Agreement (hereinafter "Agreement") is entered into by the City of Belmont, a municipal corporation (hereinafter "City"), and [Click here to enter text.](#), (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the "parties."

RECITALS

- A. City requested a proposal from Consultant to perform the services generally including: the application of chemical root control agent to sanitary sewers, in order to kill the root growth present in the lines and to inhibit re-growth, without permanently damaging the vegetation producing roots.
- B. In response to the City's request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit "A", in return for the compensation described in this Agreement and Exhibit "B".
- C. In reliance upon Consultant's documentation of its qualifications, the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A", attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. The initial term of the contract shall be for the period of one year. The contract may be extended for two additional years with the mutual consent of the City of Belmont and Consultant. Unit prices shall be valid thru September 30, 2018. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 3. **PAYMENT.**
 - 3(A). **Billing.** In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges based upon the Consultant's unit prices (set

forth on Exhibit "B"). The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City.

3(B). **"Not to Exceed" Compensation**. The compensation payable to Consultant for the services identified in Exhibit "A" shall not exceed \$60,000. Consultant shall not perform any services beyond the services identified in Exhibit "A" without prior written authorization from the City's Authorized Representative. If the City's Authorized Representative provides authorization for additional services, the total compensation payable to the Consultant under this Agreement shall not exceed \$ 210,000.

3(C). **Consultant's Failure to Perform**. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. **AUTHORIZED REPRESENTATIVES**.

4(A). **Consultant's Authorized Representative**. Consultant understands that, in entering into this Agreement, the City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any). All services under this Agreement shall be performed by, or under the direct supervision of, Consultant's Authorized Representative.

4(B). **City's Authorized Representative**. For the performance of services under this Agreement, the Consultant shall take direction from the City's Authorized Representative, **Tim Murray**, unless otherwise designated in writing by the City's Authorized Representative or the City Manager.

5. **INFORMATION AND DOCUMENTATION**.

5(A). **Information from City**. City has made an effort to provide Consultant with all information necessary for Consultant's performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in City's possession.

5(B). **Consultant's Accounting Records**. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

5(C). **Ownership of Work Product**. All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("work product"), whether complete or in

progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand by the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City.

6. **RELATIONSHIP BETWEEN THE PARTIES.** Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.
7. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.
8. **NONDISCRIMINATION.** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.
9. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not those laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.
10. **LABOR CODE REQUIREMENTS.**
 - 10(A). **Hours of Labor.** As required by Labor Code Section 1810 and 1813, the parties stipulate as follows. Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as penalty to the City, \$25 for each workman employed in the performance of the Contract by the Contractor or by any subcontractor under him for each calendar day during which such workman is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 to 1815, except that work performed by employees of the Contractor in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not

less than one-and-one-half times the basic rate of pay.

10(B). Prevailing Wage. The services to be performed under this agreement are for “Public Works” within the meaning of Labor Code Sections 1720 to 1861. Contractor must therefore comply with the prevailing wage requirements of Labor Code Sections 1720 to 1780.

10(C). Wage Rates.

10(C)(1). In accordance with Labor Code Section 1773.2, the City has obtained from the Director of the California Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker needed to execute the contract, a copy of which is hereby incorporated by reference. Copies of the prevailing rates of per diem wages are on file in City’s office and are available to any interested party.

10(C)(2). The Contractor must post a copy of the prevailing rate of per diem wages at each job site.

10(C)(3). The term “per diem wages” is defined in Labor Code Section 1773.1.

10(D). Failure to Pay Prevailing Wages.

10(D)(1). In accordance with Labor Code Section 1775, the Contractor will forfeit as a penalty to the City an amount determined by the Labor Commissioner under Section 1775 for each calendar day or portion thereof for each workman paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Contract by the Contractor or by any subcontractor under the Contractor in violation of the provisions of the Labor Code.

10(D)(2). As required by Labor Code Section 1775, the parties stipulate that the contractor and subcontractors must comply with Section 1775, and in the event of non-compliance with payment of prevailing wages to workers, the contractor or subcontractor must pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate to each worker.

10(D)(3). The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against the City on the Contract.

10(E). Payroll Records.

10(E)(1). The Contractor and each subcontractor must comply with Labor Code Section 1776 and all requirements of contractors stated therein for the maintenance, inspection and certification of payroll records.

10(E)(2). The Contractor and each subcontractor who fails to timely furnish payroll records or make the records available for inspection will forfeit to the City the penalty for non-compliance set forth in Labor Code Section 1776 for their respective failure.

10(F). **Apprentices.** This subsection applies to contracts for Public Works involving \$30,000 or more.

10(F)(1). The contractor and each subcontractor must comply with the requirements for employment and compensation of apprentices as set for in Labor Code Section 1777.5. The prime Contractor is responsible for compliance with Labor Code Section 1777.5 for all apprenticeable occupations.

10(F)(2). As required by Labor Code Section 1773.3, the City will send notice of the award of this Contract to the Division of Apprenticeship Standards within five days after award.

10(G). **Discrimination.** The contractor and each subcontractor must comply with the anti-discrimination requirements of Labor Code Section 1777.6.

10(H). **Work er's Co mp en sation.**

10(H)(1). In accordance with Labor Code Section 1860, the contractor and each subcontractor must secure the payment of workers' compensation for their employees as required by Labor Code Section 3700.

10(H)(2). Before performing the work, the Contractor must sign and file with the City, the certification required by Labor Code Section 1861.

11. **BUSINESS LICENSE.** The Consultant shall apply for and pay the business tax and registration tax for a business license, in accordance with the Belmont City Code.

12. **INSURANCE.** Consultant shall acquire and maintain Workers Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance coverage relating to Consultant's services to be performed hereunder covering City's risks in form subject to the approval of the City Attorney as set forth in this section.

12(A). **Coverage.** The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

Insurance Category	Minimum Limits
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage.

Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Consultant's vehicle usage in performing services hereunder)
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Professional Liability	\$1,000,000 per claim and aggregate
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12(B). Insurer Qualifications. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

12(C). Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either:

12(C)(1). the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or,

12(C)(2). Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

12(D). Subrogation Waiver. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

12(E). Evidence of Coverage. Concurrently with the execution of this Agreement, Consultant shall furnish City with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

12(E)(1). Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after City shall have received written notification of cancellation or reduction in coverage by first class mail;

12(E)(2). Naming the City of Belmont, its Council, officers, boards, commissions, employees, volunteers and agents, as additional insureds as respects: liability arising out of work or operations performed by or on behalf of Consultant; or automobiles owned, leased, hired or borrowed by Consultant.

12(E)(3). Providing that Consultant's insurance coverage shall be primary insurance with respect to City, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by City for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of Consultant's insurance and not contributory with it.

12(E)(4). If General or Professional Liability are written on a claims-made form:

12(E)(4)(a). The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.

12(E)(4)(b). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

12(E)(4)(c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

12(E)(4)(d). A copy of the claims reporting requirements must be submitted to City for review.

- 13. REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by email at finance@belmont.gov, and Consultant shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.
- 14. INDEMNIFICATION.** Consultant shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from performance, or failure to perform, under this Agreement.
- 15. TERM OF THE AGREEMENT.** The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit "A" and paragraph 2 of this Agreement. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit "B" or the maximum amount authorized under paragraph 3 of this Agreement.
- 16. DEFAULT.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.
- 17. NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized

Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City of Belmont

Attn: [Click here to enter text.](#)
[Click here to enter text.](#)
One Twin Pines Lane, Suite [Click here to enter text.](#)
Belmont, CA 94002

To: Consultant

Attn: [Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

18. **HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
19. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
20. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Mateo.
21. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
22. **ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
23. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
24. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
25. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

26. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
27. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

CITY OF BELMONT

By: _____
Greg Scoles, City Manager

Date: _____

APPROVED AS TO FORM

Scott M. Rennie, City Attorney

CONSULTANT [Click here to enter text.](#)

By: _____

(print name) (print title)

Date: _____

By: _____

(print name) (print title)

Date: _____